

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re)
)
MARY LITTLEJOHN,) CASE NO. 17-03305-JMC-13
)
Debtor(s).)

MOTION TO DETERMINE THE VALIDITY OF PAYMENT CHANGE

The Debtor hereby moves the Court to determine the validity of a mortgage payment change filed by U.S. Bank National Association, and now states:

1. A history of the mortgage claim activity in this case is as follows:

a. 09/05/2017 Proof of Claim #6 filed by Select Portfolio Servicing, Inc., indicating total payment \$649.58, comprised of principal and interest ("P&I") of \$478.01 (interest rate 3.125%) and property taxes and hazard insurance escrow ("escrow") amount of \$171.57.

b. 11/13/2017 Transfer of Claim from Select Portfolio Servicing, Inc. to MTGLQ Investors, LP

c. 06/19/2018 Notice of Payment Change filed by MTGLQ Investors, LP, indicating total payment \$748.86, comprised of P&I \$508.85 (interest rate undisclosed) and escrow amount of \$240.01, effective 8/1/2018

Indicated there was no escrow previously, though Proof of Claim did have escrow.

Notice Withdrawn

d. 08/08/2018 Motion for Determination of Fees, Expenses or Charges filed by Trustee
Motion Withdrawn

e. 12/17/2018 Transfer of Claim from MTGLQ Investors, LP to US Bank Trust National Association as Trustee.

f. 12/27/2018 Notice of Payment Change filed by US Bank Trust National Association as Trustee, indicating total payment \$1,175.56, comprised of P&I \$935.55 (interest rate 5.375%) and escrow amount of \$240.01, effective 2/1/19

Indicated prior interest rate was 4.125% but most recent reported interest rate was 3.125%

Notice Withdrawn

g. 02/08/2019 Motion to Determine Validity of Payment Change
filed by Trustee
Motion Withdrawn

h. 05/08/2019 Transfer of Claim from US Bank Trust National Association as Trustee to U.S. Bank Trust National Association

i. 05/08/2019 Notice of Payment Change filed by U.S. Bank Trust National Association, indicating total payment \$1,107.12, comprised of P&I \$935.55 (interest rate 5.375%) and escrow amount of \$171.57, effective 6/1/19

Indicated prior interest rate was 4.125% but most recent reported interest rate was 3.125%, corrected by Amended NPC filed 6/17/19

j. 06/14/2019 Motion to Determine Validity of Payment Change
filed by Trustee

k. 06/17/2019 Amended Notice of Payment Change filed by U.S. Bank Trust National Association, indicating total payment \$1,107.12, comprised of P&I \$935.55 (interest rate 5.375%) and escrow amount of \$171.57, effective 6/1/19

Indicated interest rate increase from 3.125% to 5.375%

l. 07/23/2019 Second Amended Notice of Payment Change filed by U.S. Bank Trust National Association, indicating total payment \$1,099.53, comprised of P&I \$927.96 (interest rate 5.375%) and escrow amount of \$171.57, effective 6/1/19

Indicated interest rate increase from 3.125% to 5.375%

m. 10/25/2019 Notice of Payment Change filed by U.S. Bank Trust National Association, indicating total payment \$1,166.03, comprised of P&I \$927.96 (interest rate undisclosed) and \$ escrow amount of \$238.07, effective 12/1/19

n. 11/26/2019 Notice of Payment Change filed by U.S. Bank Trust National Association, indicating total payment \$1,269.47, comprised of P&I \$1,031.40 (interest rate 4.250%) and escrow amount of \$238.07, effective 2/1/20

2. The most recent Notice of Payment Change filed on 11/26/2019 indicates that the interest rate is decreasing from 5.375% to 4.250%, but that the P&I portion of the payment is increasing from \$927.96 to \$1,031.40. Debtor asserts that a reduction of the interest rate would cause the P&I portion of the payment to decrease, not increase, calling into question the accuracy of the math.

3. The increase in the interest rate on the Notice of Payment Change filed on 7/23/2019, from 3.125% to 5.375%, exceeds the 2% cap per annual adjustment in violation of Section 4(D) of the Loan Modification Agreement attached to the Proof of Claim filed by U.S. Bank National Association's predecessor.

4. The payment changes effective in August 2018 (though withdrawn),

February 2019 (though withdrawn), June 2019, December 2019, and February 2020 are in violation of Section 4(A) of the Loan Modification Agreement attached to the Proof of Claim filed by U.S. Bank National Association's predecessor, which indicates the payment can only change every January.

WHEREFORE, Debtor moves the Court to determine the validity of:

(a) whether the P&I portion of the mortgage payment should increase when the interest rate decreases from 5.375% to 4.250% in the Notice of Payment Change filed on 11/26/19;

(b) whether the lender can increase the interest rate from 3.125% to 5.375% in a single adjustment in the Notice of Payment Change filed on 7/23/19 pursuant to Section 4(D) of the Loan Modification Agreement attached to the Proof of Claim filed by U.S. Bank National Association's predecessor; and

(c) whether lender can change the payment effective any other month than January, pursuant to Section 4(A) of the Loan Modification Agreement attached to the Proof of Claim filed by U.S. Bank National Association's predecessor,

and grant such other relief as appropriate.

/s/ Joseph A. Ross
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CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2020 a copy of the foregoing was sent to the following party/parties through the Court's Electronic Case Filing System. Party/parties may access this filing through the Court's system.

U.S. Trustee Email: USTP.Region10@usdoj.gov
Ann Delaney Email: ECFdelaney@trustee13.com
Sarah E. Barngrover for MTGLQ Investors, LP, Email: amps@manleydeas.com
Adam Bradley Hall for MTGLQ Investors, LP, Email: amps@manleydeas.com
Jon Jay Lieberman for U.S. Bank Trust National Association as Trustee of, Email: bankruptcy@sottileandbarile.com
Molly Slutsky Simons for U.S. Bank Trust National Association as Trustee of, Email: bankruptcy@sottileandbarile.com
D. Anthony Sottile for U.S. Bank Trust National Association as Trustee of, Email: bankruptcy@sottileandbarile.com
S. Brent Potter for U.S. Bank Trust National Association as Trustee of, Email: bankruptcy@doylefoutty.com

I further certify that on April 2, 2020, a copy of the was mailed by first-class U.S. Mail, postage prepaid and properly addressed, to the person(s) below or on the list attached hereto.

Signed /s/ Joseph A. Ross
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